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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON,
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA
INCORPORATED,

Defendant,

NANA REGIONAL CORPORATION, and
NORTHWEST ARCTIC BOROUGH,

Intervenor-Defendants.

Case No.: A:04-cv-0049 (JWS)

**JOINT REPLY TO JOINT MOTION
TO STRIKE PLAINTIFFS'
REPLIES AT DOCKETS 246 AND
248 OR, IN THE ALTERNATIVE,
REQUEST TO FILE REPLIES [RE:
DOCKET 252]**

Plaintiffs assert mistakenly that Defendants claim not to have understood the Court's Order.¹ Rather, Defendants believe the Court's Orders were clear and that they correctly understand them.

The Court ordered that :

1. Motions as to known, difficult evidentiary matters were to be filed by January 22, 2008;²

¹ Doc. 277 at 2.

2. Objections to exhibits were to be filed by January 29, 2008, with responses to be filed by February 5, 2008;³

3. Objections to (1) statements of qualifications of experts and (2) deposition designations were to be filed by January 29, 2008;⁴ and

4. Deadlines may be changed “only by order of the court for good cause shown.”⁵

Accordingly, when the applicable deadlines for responding to some of the Plaintiff’s motions objecting to exhibits and witnesses were not evident, Defendants, along with Plaintiffs, asked the Court to set the deadlines for responding to the motions.⁶ The Court then set the deadlines for responding to Plaintiffs’ objections, but did not set a deadline for replies to the exhibit objections even though it set a deadline for replies to the witness objections.⁷

Likewise, if Plaintiffs sought to file a motion in limine after the deadline of January 22, 2008, set by the Court, or sought to file replies to their exhibit objections, they should have asked the Court’s permission to do so. Defendants understood that this is what the Court required with its Order for Pre-Trial Proceedings and Final Pre-Trial Conference. What Defendants did not understand is that a party could unilaterally revise the Court’s schedule to secure for themselves the right to file an additional brief simply by choosing a different title for their brief.

Plaintiffs, by contrast, appear to take a more “pick and choose” approach to the Court’s Orders. They chose to follow the deadline for filing their objections to exhibits

² Doc. 177 at 4.

³ Doc. 177 at 3-4.

⁴ Doc. 177 at 3.

⁵ Doc. 177 at 5.

⁶ Doc. 229.

⁷ Doc. 230.

1 and responses to the same. They also chose to interpret the Court's Order as eliminating
2 the right to file a reply in support of objections to exhibits.⁸ But they then chose to
3 interpret the Court's Order as having nothing to say about whether they could file a reply
4 in support of those same objections if the objections were raised in a pleading styled a
5 motion in limine.⁹

7 Plaintiffs attempt to justify this double standard by arguing that they objected for
8 two different kinds of reasons, implying that one set of reasons was so compelling –
9 alleged discovery violations – that somehow they could not adequately raise those
10 reasons in the objections briefing the Court afforded all parties. Why Plaintiffs could not
11 have made the same arguments in their Objections is not clear. Plaintiffs certainly never
12 attempt to explain why doing so was not possible.

15 What Plaintiffs transparently are trying to do is win for themselves an opportunity
16 to have one more bite at the apple than what the Court provided for in its Orders. If the
17 parties in fact can file motions in limine after January 22 without leave of the Court, then
18 Defendants concede that Plaintiffs may be entitled to that extra bite. If not, Plaintiffs'
19 replies in support of their objections to Defendants' exhibits should be struck.

27 ⁸ Doc. 277 at 5.

28 ⁹ Doc. 277 at 2-4.

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Dated: March 7, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing JOINT REPLY TO JOINT MOTION TO STRIKE PLAINTIFFS' REPLIES AT DOCKETS 246 AND 248 OR, IN THE ALTERNATIVE, REQUEST TO FILE REPLIES [RE: DOCKET 252] was served via the method indicated below this 7th day of March, 2008, on the following parties:

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